

Message Text

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PAGE 01 BONN 13474 01 OF 02 181159Z
ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 FRB-03 COME-00 L-03 CIAE-00
INR-07 NSAE-00 /034 W
-----081370 181251Z /43
R 181140Z AUG 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 0740
DEPARTMENT TREASURY
INFO USMISSION USBERLIN

LIMITED OFFICIAL USE SECTION 01 OF 02 BONN 13474

DEPARTMENT PASS TREASURY, DIRECTOR INTERNATIONAL
OPERATIONS DIVISION, L'ENFANT PLAZA

E.O. 11652: N/A
TAGS: ECON, EFIN, GW
SUBJECT: GERMAN DENIAL OF REQUEST FOR U.S. NATIONAL
BANK EXAMINERS TO EXAMINE CITY BANK, A.G.

REF: (1) BONN 12440, (2) STATE 187287

1. WE HAVE DISCUSSED WITH FINANCE MINISTRY DEPUTY
ASSISTANT SECRETARY BERGSTRAESSER THE GERMAN DENIAL OF
OUR REQUEST TO EXAMINE CITY BANK, A.G., STRESSING THE
MUTUAL INTEREST OF BOTH COUNTRIES IN EFFECTIVE BANK
EXAMINATIONS. DEPUTY ASSISTANT SECRETARY BERGSTRAESSER
RESPONDED THAT THE GERMAN SIDE HAS THOROUGHLY EXPLORED
THIS QUESTION AND HAS COME TO THE CONCLUSION THAT SUCH
U.S. EXAMINATION OF A BANK INCORPORATED UNDER GERMAN
LAW WAS NOT POSSIBLE, UNLESS AND UNTIL GENERAL
ARRANGEMENTS WERE AGREED BETWEEN THE TWO GOVERNMENTS
COVERING CASES SUCH AS THESE AND CORRESPONDING TO THE
ARRANGEMENTS MADE IN THE EXCHANGE OF NOTES OF OCTOBER 20,
1971 AND MARCH 16, 1972 FOR THE EXAMINATION OF BANK
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PAGE 02 BONN 13474 01 OF 02 181159Z

BRANCHES. HE STRESSED THAT THE GERMAN SIDE COULD NOT
ENTER INTO SUCH AN ARRANGEMENT FOR SUBSIDIARIES
UNLESS THE ARRANGEMENT ALSO CONTAINED RECIPROCITY FOR
SIMILAR EXAMINATIONS BY GERMAN BANK EXAMINERS IN THE
U.S. HE ALSO INDICATED THAT HE FELT THE ARRANGEMENTS
SHOULD SPECIFY THAT SUCH EXAMINATIONS WOULD TAKE PLACE
ONLY WITH THE AGREEMENT OF THE SUBSIDIARY CONCERNED

AND THAT DURING THE EXAMINATION FOREIGN BANK EXAMINERS WOULD NOT ENGAGE IN ANY "ACTS OF SOVEREIGNTY" IN THE OTHER STATE. IN RESPONSE TO A QUESTION, HE SAID THAT SUCH "ACTS OF SOVEREIGNTY" WOULD, FOR EXAMPLE, CONSIST IN THE CONFISCATION OF DOCUMENTS, ETC., BUT HE DID NOT FURTHER ELABORATE OR COME BACK TO THIS POINT IN THE SUBSEQUENT DISCUSSION.

2. DURING THE DISCUSSION WE EXPLORED THE POSSIBILITY OF MAKING AD HOC ARRANGEMENTS FOR THE CONTEMPLATED EXAMINATION OF CITY BANK, A.G. PENDING A MORE FORMAL GENERAL AGREEMENT. BERGSTRAESSER REPLIED THAT THIS WAS COMPLETELY OUT OF THE QUESTION. WE THEN DISCUSSED THE BACKGROUND OF THE EXCHANGE OF NOTES OF OCTOBER 1971 AND MARCH 1972 AND STRESSED THE PROBLEM FOR THE UNITED STATES IN ASSURING FULL RECIPROCITY SINCE THIS QUESTION IN THE U.S. TO A LARGE EXTENT FELL UNDER THE JURISDICTION OF THE STATE GOVERNMENTS. WE INDICATED THAT WE, THEREFORE, THOUGHT THAT ANY AGREEMENT ON RECIPROCITY IN THE EXAMINATION OF SUBSIDIARIES PROBABLY COULD NOT GO BEYOND THE WORDING WE HAD AGREED UPON IN THE CASE OF BRANCHES IN THE ABOVE EXCHANGE OF NOTES. BERGSTRAESSER DID NOT DISAGREE WITH THIS AND GENERALLY INDICATED THAT THE FINANCE MINISTRY WAS PREPARED TO BE ACCOMMODATING IN THE ARRANGEMENTS FOR RECIPROCITY. HE WARNED, HOWEVER, THAT THE FOREIGN OFFICE AT SOME POINT LIMITED OFFICIAL USE

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PAGE 03 BONN 13474 01 OF 02 181159Z

WOULD HAVE TO BE BROUGHT IN AND THAT TRADITIONALLY IT TENDED TO TAKE A TOUGHER LINE ON THE LEGAL PRINCIPLE INVOLVED.

3. IN RESPONSE TO OUR QUESTION HOW WE SHOULD NOW PROCEED, BERGSTRAESSER REPLIED THAT HE FELT THE U.S. SIDE SHOULD DRAW UP A PROPOSAL FOR AN AGREEMENT WHICH ARRANGED FOR EXAMINATION OF SUBSIDIARIES ON THE BASIS OF RECIPROCITY. HE SAID THAT THE FORM IN WHICH WE PROPOSED THIS WAS NOT IMPORTANT AT THIS POINT AND, FOR EXAMPLE, MIGHT BE A LETTER FROM THE EMBASSY TO HIM. ONCE THE GERMAN SIDE HAD A U.S. PROPOSAL IT WOULD THEN EXAMINE IT AND BE BACK IN TOUCH. HE DID NOT EXPRESS ANY VIEWS REGARDING THE CONTENT OF THE PROPOSAL -- SUCH AS, FOR EXAMPLE, WHETHER IT SHOULD COVER ONLY 100 PERCENT OWNED SUBSIDIARIES OR ALSO 50 PERCENT ONES, ETC. INSTEAD HE SAID THAT THE GERMAN SIDE WOULD CONCENTRATE ON THESE AND ALL OTHER ASPECTS ONCE IT HAD A DEFINITE U.S. PROPOSAL TO WORK ON.

COMMENT: WE AGREE THAT IT PROBABLY WOULD BE

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PAGE 01 BONN 13474 02 OF 02 181202Z
ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 FRB-03 L-03 CIAE-00 INR-07
NSAE-00 COME-00 /034 W
-----081410 181250Z /43

R 181140Z AUG 77
FM AMEMBASSY BONN
TO SECSTATE WASHDC 0741
DEPARTMENT TREASURY
INFO USMISSION USBERLIN

LIMITED OFFICIAL USE SECTION 02 OF 02 BONN 13474

BEST TO WORK WITH THE FINANCE MINISTRY IN THE FIRST
INSTANCE. IN THE END, HOWEVER, SUCH AN AGREEMENT
PROBABLY WOULD HAVE TO TAKE THE FORM OF AN EXCHANGE OF
NOTES BETWEEN THE EMBASSY AND THE FOREIGN OFFICE.

4. WE HAVE ALSO DISCUSSED THE U.S. EXAMINATION OF
SUBSIDIARIES OF U.S. BANKS IN THE FRG WITH DR. BAEHRE,
THE HEAD OF THE GERMAN BANKING SUPERVISORY AUTHORITY
IN BERLIN. DR. BAEHRE TOLD US THAT THIS QUESTION WAS
BEYOND HER COMPETENCE AND SHOULD BE SETTLED WITH THE
FEDERAL MINISTRY OF FINANCE IN BONN. SHE STRESSED THAT
SHE ALREADY HAD MADE THIS POINT WITH THE FORMER
COMPTROLLER OF THE CURRENCY, JAMES E. SMITH, WHEN HE
VISITED THE GERMAN BANKING SUPERVISORY AUTHORITY IN
JANUARY OF 1976. (THIS ALSO CORRESPONDS TO THE
RECOLLECTIONS OF THE EMBASSY FINANCIAL ATTACHE WHO
ACCOMPANIED MR. SMITH'S PARTY ON THAT VISIT.) DURING
THE SUBSEQUENT DISCUSSIONS, DR. BAEHRE COMMENTED THAT
WHILE THE QUESTION OF RECIPROCITY AT THE MOMENT WAS
MAINLY ONE OF PRINCIPLE WITHOUT ANY PRACTICAL EFFECT
(I.E., THERE ARE NO 100 PERCENT OWNED SUBSIDIARIES OF
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PAGE 02 BONN 13474 02 OF 02 181202Z

GERMAN BANKS IN THE U.S. AT THIS TIME), SHE NEVERTHELESS ALSO HAD AN INTEREST IN SUCH A RECIPROCITY AGREEMENT. FOR ONE THING, SHE WAS NOT SURE WHETHER OR NOT GERMAN BANKS MIGHT NOT FIND IT ADVANTAGEOUS TO CONVERT U.S. BRANCHES INTO SUBSIDIARIES AT SOME TIME IN THE FUTURE -- POSSIBLY IN CONNECTION WITH THE PENDING U.S. LEGISLATION ON FOREIGN BANKS. FOR ANOTHER, SHE WOULD FIND SUCH A RECIPROCITY AGREEMENT WITH THE U.S. A MOST USEFUL PRECEDENT AND TALKING POINT IN HER NEGOTIATIONS WITH LUXEMBOURG WHERE SHE IS STRONGLY PUSHING FOR THE RIGHT TO EXAMINE GERMAN BANK SUBSIDIARIES.

5. DR. BAEHRE ASKED THE FINANCIAL ATTACHE WHETHER IN EXAMINING AN INTERNATIONAL BANK SUCH AS CITY BANK, THE U.S. AUTHORITIES APPLIED TOOLS OF CONTROL -- SUCH AS, FOR EXAMPLE, RATIOS BETWEEN EQUITY CAPITAL AND LARGE LOANS, ALL LOANS, ETC. TO A CONSOLIDATED BALANCE SHEET INCORPORATING ALL FOREIGN SUBSIDIARIES OF THE BANK. THE FINANCIAL ATTACHE RESPONDED THAT HE DID NOT KNOW BUT WOULD GET THE ANSWER FOR HER FROM THE U.S. COMPTROLLER. PLEASE ADVISE.

COMMENT: WHILE DR. BAEHRE IS, OF COURSE, CORRECT THAT THE QUESTION OF ALLOWING U.S. EXAMINATION OF SUBSIDIARIES IS ONE FOR THE MINISTRY OF FINANCE, WE ARE SURE THAT HER VIEWS WILL HAVE CONSIDERABLE WEIGHT IN THE INTERNAL GERMAN GOVERNMENT DELIBERATIONS. WHILE SHE DID NOT CONFIRM THE PARTICULAR VIEWS ATTRIBUTED TO HER IN REFTEL 2, WE DID HAVE THE IMPRESSION THAT IN GENERAL SHE WAS SYMPATHETIC TO THE U.S. REQUEST. WE ASKED HER ADVICE WHETHER IT WOULD BE PREFERRABLE FOR THE U.S. IN ITS REQUEST TO THE FINANCE MINISTRY AT THIS TIME TRY TO COVER ONLY 100 LIMITED OFFICIAL USE

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PAGE 03 BONN 13474 02 OF 02 181202Z

PERCENT OWNED SUBSIDIARIES OR WHETHER WE SHOULD ALSO TRY TO SETTLE THE QUESTION OF SUBSIDIARIES WITH LESS THAN 100 PERCENT OWNERSHIP. SHE RESPONDED THAT SHE WOULD ADVISE TAKING ONE STEP AT A TIME AND, IN THE FIRST INSTANCE, ONLY TRY TO MAKE AN ARRANGEMENT FOR 100 PERCENT OWNED SUBSIDIARIES.

6. REGARDING THE POINT RAISED IN PARA 3 OF REFTEL 2, WE ARE SURE THAT DR. STAUCH IN HIS COMMENT MUST HAVE MEANT AN ALTERATION OF THE 71/72 AGREEMENT. DR. STAUCH IS AN OFFICE DIRECTOR UNDER FRAU DR. BAEHRE WHO DEALS PARTICULARLY WITH THE LICENSING, EXAMINATION AND SUPERVISION OF U.S. BANKS IN THE FEDERAL REPUBLIC. HIS

VIEWS, WHILE IMPORTANT, THUS ARE ALWAYS
SUBJECT TO BEING OVERRULED BY DR. BAEHRE. SIMILARLY,
HER VIEWS UNDER THE GERMAN SYSTEM, ARE SUBJECT TO BEING
OVERRULED BY THE MINISTRY OF FINANCE.
STOESSEL

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BANKS, AUDITS
Control Number: n/a
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Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
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Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
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Litigation Code IDs:
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Message ID: 46ab1759-c288-dd11-92da-001cc4696bcc
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 BONN 12440, 77 STATE 187287
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 04-Feb-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1569824
Secure: OPEN
Status: NATIVE
Subject: GERMAN DENIAL OF REQUEST FOR U.S. NATIONAL BANK EXAMINERS TO EXAMINE CITY BANK, A.G.
TAGS: ECON, EFIN, GE
To: STATE TRSY
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/46ab1759-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009